IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 701 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVJIBHAI KOHYABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 701 of 2004

MS SHAILI A KAPADIA for Petitioner No. 1

MR HM PRACHCHHAK, APP for Respondent No. 1

MS JAYSHREE C BHATT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Shaili A. Kapadia for

the petitioner and ld. APP Mr. HM Prachchhak for respondent No.1 State.

2. Rule. Ld. APP Mr. HM Prachchhak appears and waives service of Rule for respondent No.1 State and ld. counsel Ms. JC Bhatt appears and waives service of Rule for respondent No.2. With the consent of ld. counsel appearing for the parties, the present petition is taken up for final hearing today.

3. The grievance of the petitioner is that Investigating Agency is required to be directed to carry out the investigation independently and in the background of the entire incident as has been reported to police by the complainant Devjibhai Kohyabhai Vankar on 15.08.2001. It is categorically alleged in the complaint that his son Jagdishbhai Vankar has sustained injury in the incident in question. Documentary evidence attached with the petition and shown to the Court clearly indicates that this Jagdish is one of the injured eye-witness and was shifted to the hospital because of the injuries sustained by him at the hands of the accused/assailants. He was admitted in the hospital and thereafter as per documents page nos.51, 52 and 53, he had undergone abdominal surgery. because of the injury sustained by him. Laptrotomy operation was performed by the doctor. Copy of the chargesheet annexed to the petition (P.17) clearly indicates that according to the Investigating Agency, the investigation is over and 9 accused have been chargesheeted for the offences punishable under sections 143, 147, 148, 337, 335, 323, 504, 506(2) and 427 of the Indian Penal Code and also under Sec.135 of the Bombay Police Act. Column No.IV is meant for the names of the witnesses wherein name of injured Jagdish is not shown as witness. So, it is rightly submitted that important eye-witnesses have not been shown as witnesses in the chargesheet and investigation has not been carried out independently.

4. Without commenting upon the efficiency of the officer who had undertaken investigation or as to fairness in investigation, it was necessary for the prosecution to see that statements of each important witnesses and especially injured witnesses are recorded and they are placed before the Court. Of course, such statements should also be provided in advance to the accused who are facing trial.

5. After perusal of the papers of investigation brought before the Court today, ld. APP Mr. Prachchhak has fairly accepted that he also does not find any

statement of injured Jagdish in the papers of investigation.

6. The present petition is filed under Articles 226 & 227 of the Constitution of India for appropriate writ, order or direction and in view of the set of facts as aforesaid, without entering into further discussion and merits, it is hereby directed that District Supdt. of Police, Panch Mahals shall see that in connection with the offence registered with Godhara Taluka Police Station being I.CR No.212/2001, a detailed further investigation is carried out and statements of all witnesses named in the FIR as well as of important witnesses including injured Jagdish are recorded by the Police Officer not below the rank of Police Inspector and the same are brought before the court by way of supplementary chargesheet. It is further directed that DSP, Panch Mahals shall also see that papers of medical treatment given to injured Jagdish are considered by the Investigating Officer and are made part of the chargesheet, if they are found otherwise relevant. Directions accordingly.

7. Rule is made absolute to the above terms. Direct Service is permitted.

[C.K. BUCH, J]

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